

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36970
Docket No. MW-36209
04-3-00-3-400

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Fristh Construction) to perform Maintenance of Way and Structures Department work (demolish and remove crew change building) in Clinton, Iowa on March 23, 24, 25, 26, 29, 30, 31, April 1 and 2, 1999 (System File 3KB-6521T/1191031 CNW).
- (2) The Agreement was further violated when the Carrier failed to confer with the General Chairman in a good-faith attempt to reach an understanding concerning the work in question required by Rule 1 and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. M. Naughton and J. A. Pope shall now be compensated for seventy-two (72) hours' pay at their respective straight time rates of pay.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On January 20, 1999, the Carrier notified the General Chairman of its intent to solicit bids for the demolition and abatement of the old Crew Change Motel building in Clinton, Iowa. When the General Chairman requested discussion of the notice, a conference was held on February 4, 1999 and mutually confirmed by an exchange of letters dated February 8, 1999. In short, the Carrier advised that asbestos abatement was part and parcel of the demolition of the old Crew Change Motel building in Clinton, Iowa, and for several buildings and above-ground storage tanks ("ASTs") in Council Bluffs and Sioux City, i.e., "All of these facilities and structures contain asbestos, which, by Federal law, must be handled and disposed of by workers certified to perform such work." For its part, the Organization acknowledged that no BMWE-represented employees currently held the statutorily mandated asbestos abatement certification ("EPA Adhere Certification") but countered that building demolition was Scope Rule covered work and reserved the right to file claims if the Carrier proceeded with the announced subcontracting and no special asbestos abatement skills were actually required.

The record evidence establishes that the contractor eventually hired to do the disputed work at Clinton, Iowa, was certified to abate asbestos, that Sample No. 34 & 61 showed up to 20% asbestos by sample, that the demolition of the building followed NESHAP guidelines and ACM abatement was required prior to demolition. While the Organization argues that Carrier forces should have been permitted to perform the demolition work after asbestos abatement work was done,

the record supports the Carrier's position that the two kinds of work were inseparable in that asbestos removal and control was a legitimate on-going concern throughout the demolition project. The only argument raised by the Organization is that at various points in the overall demolition effort, asbestos removal was not involved. We are persuaded to the Carrier's view that the asbestos abatement and building demolition of the old crew quarters were part and parcel of the same operation. The Board has long held that, under such circumstances, it was not necessary to piecemeal the project. See Third Division Awards 34213, 20899 and 20785.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of April 2004.